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TO: The Honorable Dereck E. Davis, Chairman
Economic Matters Committee

FROM: Steven M. Sakamoto-Wengel
Consumer Protection Counsel for Regulation, Legislation and Policy

**RE: House Bill 1064 -- Commercial Law -- Net Neutrality Act of 2021
(SUPPORT)**

The Office of the Attorney General strongly supports House Bill 1064, sponsored by Delegate Reznik. This bill is necessary to address the rollback of federal protections for Maryland consumers when using the Internet. Net neutrality broadly encompasses the idea that all data traffic on the Internet should be treated equally, and to counter past and planned actions of Internet Service Providers (“ISPs”) to offer tiered service plans that block or throttle access to selected sites or create payment tiers based on which sites are being visited, among other provisions. The Federal Communications Commission (“FCC”) rolled back its own 2015 regulations providing net neutrality protections. While the U.S. Court of Appeals for the DC Circuit upheld the right of the FCC to repeal its regulation of net neutrality, the Court also held that the FCC cannot preempt States, such as Maryland, from enacting their own regulation of net neutrality.¹ HB 1064 would protect Marylanders by doing just that.

Net Neutrality

HB 1064 is based on a law enacted in California, Washington, Oregon and Vermont and would prevent ISPs from blocking or slowing down the transmission of web traffic to Maryland’s broadband customers. The bill also ensures that Maryland consumers cannot be charged extra for access to websites. And HB 1064 guarantees that video streams will be delivered to a mobile device or internet connected television at the same speed and quality.

This bill is especially important in the wake of the FCC’s rollback of federal net neutrality regulations. When it first adopted those regulations in 2015, the FCC explained that an “open Internet drives the American economy and serves, every day, as a critical tool for America’s citizens to conduct commerce, communicate, educate, entertain, and engage in the world around

¹ *Mozilla Corp., et al., v. FCC, No. 18-1051* (DC Cir. 2019). Maryland and 21 other states are parties to the litigation.

them.”² The FCC also concluded that ISPs “have the incentives and ability to engage in practices that pose a threat to Internet openness.”³

The FCC’s rollback of net neutrality rules would allow ISPs such as Verizon and Comcast to treat websites differently based upon financial considerations, favoring larger website developers, and allowing the ISPs to charge consumers more if they want full access to the Internet. HB 1064 would ensure that Maryland consumers continue to receive full and open access to the Internet. And, while it is possible that a new FCC may again reverse course, HB 1064 would continue to protect Maryland consumers regardless of changes to the FCC’s membership.

State Procurement

The bill also establishes that State funds will only be awarded to ISPs that provide the State and its subdivisions with a fair and functional product. The bill limits the use of State funds to only procure services from ISPs that practice net neutrality—e.g., not blocking or throttling lawful traffic on their networks and not prioritizing traffic based on a financial relationship with the content provider. This falls within Maryland’s well-established right to express its preferences through State purchasing decisions as a market participant.⁴ Here, Maryland expresses its preference for protecting itself as a consumer and will only allow state funds to be used for engaging ISPs that comply with that preference.

State procurement law already contains similar provisions expressing policy preferences on a range of issues, including by restricting the procurement of services from firms that use “conflict minerals” that originated in the Democratic Republic of Congo or its neighboring countries and requiring that public employee uniforms be manufactured within the United States.⁵ HB 1064 expresses a similar preference by ensuring that State funds are used only to do business with ISPs that are willing to provide equal and open access to the Internet.

Oregon and Vermont have already passed substantially similar laws providing that state funds may only go to ISPs that comply with the principles of net neutrality.⁶ The Governors of Hawaii, New Jersey, New York, Montana, Rhode Island, and Vermont have issued executive orders which, in a substantially similar fashion, declare that their states’ funds will only be awarded to ISPs that comply with the principles of net neutrality.

Maryland has a responsibility to ensure efficient procurement of goods and services that will serve the needs of the State, and the principles of net neutrality are inherently tied to the provision of reliable, high-quality broadband internet service for the State. Maryland relies on a

² FCC, *In re Protecting and Promoting the Open Internet*, Report and Order on Remand, Declaratory Ruling, and Order, 30 FCC Rcd 5601 ¶ 1 (2015).

³ *Id.* ¶ 75.

⁴ See *Bd. of Trustees of Employees' Ret. Sys. of City of Baltimore v. Mayor & City Council of Baltimore City*, 317 Md. 72, 131–38, 562 A.2d 720, 749–52 (1989). (Court of Appeals holding that, in accordance with Supreme Court precedent, when a state acts as a market participant, “the Commerce Clause is not concerned with its decisions as to the parties with whom it will or will not deal.” There, the Court upheld a Baltimore City ordinance providing that no city funds should be invested in “banks or financial institutions that make loans to South Africa or Namibia or companies doing business in or with those countries,” because of their trade in so-called “blood diamonds.”)

⁵ See, e.g., Md. Code Ann., State Fin. & Procurement, §§ 14-411, 14-413.

⁶ See Vt. Stat. Ann., tit. 3 § 348; Or. Rev. Stat. § Ch. 88, § 1.

free and open Internet. Many Maryland government services are offered online, and throttling or paid prioritization could limit Marylanders' ready access to them. Maryland state employees use the Internet every day to conduct the business of the State and to serve its citizens, especially during the pandemic, and throttling or paid prioritization could adversely impact that work.

Using State funds to hire non-compliant ISPs will negatively affect Maryland. Those harms help to explain why a poll conducted by the Program for Public Consultation at the University of Maryland in December 2017 found that *eighty-three percent* of Americans opposed repeal of the FCC's existing net neutrality regulations.⁷ This is a decidedly nonpartisan sentiment, as the repeal of net neutrality was opposed by seventy-five percent of Republicans, along with eighty-nine percent of Democrats, and eighty-six percent of Independents.⁸

For these reasons, the Office of the Attorney General supports House Bill 1064 and urges a favorable report. Thank you for your consideration.

Cc: Members, Economic Matters Committee
The Honorable Kirill Reznik

⁷ See Program for Public Consultation, Univ. of Md., *Overwhelming Bipartisan Majority Opposes Repealing Net Neutrality* (Dec. 12, 2017), <http://www.publicconsultation.org/united-states/overwhelming-bipartisan-majority-opposes-repealing-net-neutrality>.

⁸ *Id.*